

**PT 99-39**

**Tax Type: PROPERTY TAX**  
**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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HALSTED ROAD BAPTIST CHURCH	)	Docket #	97-101-99
Applicant	)	A.H. Docket #	98-PT-0038
	)		
v.	)	Parcel Index #	Part of 190B147A
	)		
	)	<b>Barbara S. Rowe</b>	
THE DEPARTMENT OF REVENUE	)	<b>Administrative Law Judge</b>	
OF THE STATE OF ILLINOIS	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Peter A. Savitski, Attorney at Law for Halsted Road Baptist Church.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 100 W. Randolph Street, Chicago, Illinois on July 1, 1998, to determine whether or not a part of Winnebago County Parcel Index No. 190B-147A qualified for exemption during the 1997 assessment year.

Camron Holder, Deacon, and Reverend Gordon W. Logan, Trustee of the Halsted Road Baptist Church, (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant. The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was used by the applicant for religious purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel during all of the 1997 year. It is also determined that the applicant is a religious organization. Finally, it is determined that the applicant used a portion of the parcel at issue for religious purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that a part of Winnebago County Parcel Index No. 190B-147A did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 15)

2. On November 17, 1997, the Department received a property tax exemption application from the Winnebago County Board of Review for a part of Winnebago County Permanent Parcel Index No. 190B-147A. The applicant had submitted the request, and the board recommended that the Department approve in part and deny in part the requested exemption. for the 1997 assessment year. The board recommendation was: "RECOMMEND APPROVAL FOR PART OF PARCEL 190B147A (139.4 X 170) FOR CHURCH AND PARKING. THERE IS NO EVIDENCE THAT THE MUSIC DIRECTOR OR YOUTH LEADER ARE ORDAINED." The Department assigned Docket No. 97-101-99 to the application. (Dept. Grp. Ex. No. 2)

3. On March 26, 1998, the Department approved in part and denied in part the requested exemption application, finding that a portion of the property was not in exempt use. The Department granted an exemption for the 139.4' X 170' area used as a church and for church parking. The Department denied the remainder of the requested exemption. (Dept. Ex. No. 3)

4. The applicant timely protested the decision and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Chicago, Illinois on July 1, 1998 was held pursuant to that request. (Dept. Ex. No. 5)

6. On February 12, 1963, the applicant acquired "Lots 16, 21, and 22 as designated upon the County Clerk's plat of a part of the North West quarter (1/4) of Section Ten (10), Township Forty-Four (44) North Range One (1) East of the Third (3<sup>rd</sup>) Principal Meridian" by a warranty deed. (Dept. Ex. No. 2 p. 11)

7. On December 2, 1966, the applicant acquired "Part of the North West Quarter (1/4) of Section Ten (10) Township Forty-Four (44) North, Range One (1), East of the Third (3<sup>rd</sup>)

Principal Meridian<sup>1</sup> in Winnebago County, State of Illinois.” (Dept. Ex. No. 2 pp. 9-10)

8. On January 7, 1997, the applicant conveyed by a warranty deed “Part of Lot Twenty-two (22) as designated upon County Clerks Plat of Part of the Northwest Quarter (¼) of Section Ten (10), Township Forty-four (44) North, Range One (1) East of the Third (3<sup>rd</sup>) Principal Meridian, the Plat of which Subdivision being recorded in Book 20 of Plats on Page 220 in the Recorder’s Office of Winnebago County, Illinois<sup>2</sup>” which is also known as a part of 190 B 147 A. (Dept. Ex. No. 2 p. 13)

9. On January 7, 1997, the applicant conveyed, by warranty deed, “[T]he South 225.00 feet (as measured perpendicular to the South line) of Lots Twenty-one (21) and Twenty-two (22) as designated upon County Clerks Plat of part of the Northwest Quarter (¼) of Section Ten (10), Township Forty-four (44) North, Range One (1) East of the Third (3<sup>rd</sup>) Principal Meridian, the Plat of which Subdivision being recorded in Book 20 of Plats on Page 220 in the Recorder’s Office of Winnebago County, Illinois<sup>3</sup>” which is also known as a part of 190 B 147 A. (Dept. Ex. No. 2 p. 16)

10. The applicant requested the exemption for a parcel of property that had a number of different uses. The property is located at 3322 and 3326 Halsted Road, Rockford, Illinois. Located at those addresses are the church, a parking area, two houses, and a recently sodded and seeded area that the applicant plans in the future to use as a parking lot. According to the plat attached to the application, it appears that the area at issue is the Northern one-third of lots 22 and 21 and the entire portion of lot 17. Regarding the two houses on lot 17, one is designated by the applicant as a parsonage and another as a small house. The applicant also requested an exemption for a 139.4 X 170 section located in the North West that is used for the Church building and parking. An additional portion of the parcel at issue that the applicant requested an

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<sup>1</sup> Bounded as follows, to-wit: Beginning on the North line of said Section at a point one thousand five hundred twenty-nine and four tenths(1529.4) feet East of the North West corner of said section; thence South, parallel with the West line of said section, three hundred Forty and seventy-seven hundredths (340.77) feet; thence East, parallel with the North line of said Section, one hundred twenty-eight (128) feet; thence North parallel with the West line of said Section, three hundred forty and seventy-seven hundredths (340.77) feet to the North line of said Section; thence West along the North line of said Section, one hundred twenty-eight (128) feet to the place of beginning, situated in Winnebago County, State of Illinois.

<sup>2</sup> Bounded and described as follows, to-wit: Beginning at the Southwest corner of said Lot; thence North along the West line of said Lot, 150.00 feet; thence East, parallel with the South line of said Lot, 11.50 feet; thence South, parallel with the West line of said Lot, 150.00 feet to the South line of said Lot; thence West, along the South line of said Lot, 11.50 feet to the point of beginning; situated in the County of Winnebago and the State of Illinois.

<sup>3</sup> The North line of which premises being parallel with the South line of said Lots, EXCEPTING THEREFROM part of Lot Twenty-two (22) as designated upon County Clerks Plat of part of the Northwest Quarter (¼) of Section Ten (10), Township Forty-four (44) North, Range One (1) East of the Third (3<sup>rd</sup>) Principal Meridian, the Plat of which Subdivision being recorded in Book 20 of Plats on page 220 in the Recorder’s Office of Winnebago County, Illinois.

exemption for is in the South section, measures 267.4 X 127.23 and is designated as a future parking area. (Dept. Ex. No. 2 pp. 1, 12, & 19)

11. The applicant was granted an exemption for the church and the area used for parking so that 139.4' X 170' area is not before me. (Dept. Ex. No. 3)

12. The applicant noted on the plat submitted with the application that "both houses on this lot are not parsonages. Music director and youth leader lives in them." (Dept. Ex. No. 2 p. 12)

13. The two houses at issue are adjacent to applicant's church. (Applicant's Ex. No. 1; Tr. p. 19)

14. On the parsonage questionnaires submitted with the application at question No. 1 is asked: "Is the minister/nuns required as a condition of employment or association to reside in the parsonage/convent?" The applicant responded "yes" on questionnaire for Jerry McGill and "no" for Larry McGill. Question No. 6 asked "What duties, if any (whether religious or administrative) are performed in the parsonage/convent itself? What is the frequency of these duties?" For responses, the applicant wrote "no" on both questionnaires. (Dept. Ex. No. 2 pp. 3, 5)

15. The larger of the two houses at issue, known by the applicant as the parsonage, was occupied by Jerry McGill, the Ministry of Music director for the applicant, from the period of June 1997 through the time of the hearing. The Lincoln Wood Baptist Church licensed Jerry McGill on January 4, 1995, to preach the gospel and exercise his gifts in the work of Ministry. The applicant ordained him on June 7, 1998. The Music Minister provides lessons to church members related to worship and conducts small worship group practices in the parsonage. (Dept. Ex. No. 2 pp. 5-6, Dept. Ex. No. 4; Applicant's Ex. Nos. 7 & 8)

16. The larger house contains three bedrooms, a living room, dining room, kitchen, bathroom, hallway, and a breezeway connecting the garage. (Applicant's Ex. Nos. 2 & 3)

17. From the time of acquisition through the end of May 1997, the applicant's pastor occupied the house. The pastor resigned at the end of May and the applicant began to immediately seek a new leader. The new minister is expected to assume his duties in August

1998 at which time he will move into the parsonage. (Dept. Ex. No. 4; Tr. pp. 19-20)

18. The applicant initially calls a person to preach in its church and listens to that preacher a number of times. If the congregation likes the way the person preaches the applicant then checks into that person's background. If that is satisfactory, the congregation announces a special meeting to call the minister to become applicant's preacher. The Southern Baptist Church, with which the applicant is affiliated, has seven theological seminaries. However, it is not necessary for a minister to attend any course of study in order to be an ordained minister in a church. First the church licenses a prospective minister and then, after a period of training with a pastor, the church ordains the minister. (Tr. pp. 36-40)

19. Also located on the subject parcel is a smaller house that was occupied during a short portion of the period in question by Larry McGill. The rest of the 1997 assessment year, the property was vacant. Larry McGill serves as the applicant's youth leader and works with the youth in church activities. His occupation of the smaller house enabled him to be near when children were either early or late for pick-up of a scheduled youth activity. He is not licensed or ordained. He is the son of Jerry McGill and was at the time of the hearing residing in the larger house. (Dept. Ex. No. 2 pp. 3-4; Tr. pp. 32-33, 43-44)

20. The smaller house contains one bedroom, a living room, kitchen, bathroom, and walk-in closet. Future plans are to use the house for storage. (Dept. Ex. No. 4; Applicant's Ex. Nos. 4 & 5; Tr. pp. 21-23)

21. On the plat submitted with the application is also noted that the South section, which measures 267.4' X 127.23', was "recently sodded and seeded. No immediate use." The applicant intends to use it in the future for parking. (Dept. Ex. No. 2 pp. 12, 19)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 **ILCS** 200/15-40. That portion of the statutes exempts certain property from taxation in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

Pursuant to the granting of the exemption to the applicant by the Department in this matter for the church and parking, the Department has determined that the applicant is a religious organization. I find that the applicant owned the parcel here in issue during the entire 1997

assessment year. Therefore the issue before me is whether the remainder of this parcel was used in a manner that qualified for a religious property tax exemption for the 1997 assessment year.

Property owned by a church and used as a parsonage or monastery was taxable prior to 1957. See People ex. rel. Carson Muldoon, 306 Ill. 234 (1922), People ex rel. Pearsall v. Methodist Episcopal Church, 315 Ill. 233 (1925)

The Illinois Supreme Court in McKenzie v. Johnson, 98 Ill. 87 (1983) had an opportunity to address the 1957 amendment to the statute and held that the provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court also required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor's religious duties required that he live in close proximity to the church or because the parsonage had unique facilities for religious worship and instruction or was primarily used for such purposes.

Regarding the use of the parcel at issue, I find that the parsonage was occupied by the minister that left in May 1997 and subsequently occupied by Jerry McGill, the Minister of Music for the applicant. I therefore find that the residence qualified for exemption as a parsonage for the entire 1997 assessment year. I find that the house occupied by Larry McGill for a short portion of the 1997 assessment year did not qualify for an exemption as it was not established that Larry McGill was a minister and that his occupation of the house reasonably and substantially facilitated the aims of religious worship. I find that the house was vacant for the other periods in 1997. The Illinois Appellate Court found that a church-owned building that was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983).

The applicant intends to use the house for storage of church related objects but that use had not begun at the time of the hearing nor was it done during the 1997 assessment year. The applicant also intends to use the South section at issue, that measures 267.4' X 127.23' for future parking. In the case of People ex. rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The court required that the actual primary exempt use must have begun for the property to be exempt.

Based upon the foregoing, I recommend that the house designated as the parsonage and

the land on which it stands qualifies for a religious property tax exemption for the entire 1997 assessment year. I also recommend that the remainder of that part of Winnebago County Parcel Index No. 190B-147A that is at issue herein, remain on the tax rolls for the 1997 assessment year and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge  
March 5, 1999